

NOT FOR PUBLICATION

FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

Donna O. and James A.,

Plaintiffs,

v.

Bluebeard's Castle, Inc.,  
Bluebeard's Castle Hilltop Villas  
Condominium Association, James P.  
Graves, William F. Sullivan, and  
John G. Cavanaugh,

Defendants.

Civ. No. 1995-027

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Bluebeard's Castle, Inc.,  
Bluebeard's Castle Hilltop Villas  
Condominium Association,

Third-Party Plaintiffs,

v.

Gerald F. Buckalew and Elizabeth D.  
Buckalew,

Third-Party Defendants.

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**ATTORNEYS:**

**Thomas Alkon, Esq.,**  
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*For the plaintiffs,*

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*For defendants Bluebeard's Castle and Hilltop Villa  
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**James M. Derr, Esq.**

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*For defendants Graves, Sullivan and Cavanaugh,*

**Ivan A. Guzman, Esq.**

St. Croix, U.S.V.I.

*For third-party defendants Buckalews.*

## **MEMORANDUM**

Moore, J.

Bluebeard's Castle Hilltop Villas Condominium Association ["Association"] and Bluebeard's Castle, Inc. ["Bluebeard's Castle"] have moved for summary judgment on two grounds. First, the Association argues that this Court is without subject matter jurisdiction because the plaintiffs, Donna O. and James A. [collectively "plaintiffs"] and the Association are both residents of Florida, and thus there is no diversity between them. Second, Bluebeard's Castle contends that this Court must dismiss the entire action because the Association is an indispensable party and Bluebeard's Castle would be prejudiced if the Court dismissed only the Association. Plaintiffs oppose defendants' motion or, in the alternative, argue that the Court should only dismiss the Association. For the reasons stated below, I will grant the defendants' motion in party and deny it in part.

### **I. FACTS**

On September 10, 1994, the plaintiffs agree to housesit

condominium unit 226 on behalf of the owners, third-party defendants Gerald and Elizabeth Buckalew [collectively "Buckalews"]. Later that evening as the plaintiffs sat down to watch television, two masked intruders entered the condo through the sliding glass door the plaintiffs had opened to let the Buckalews' cats onto the balcony. The intruders bound, assaulted, and robbed the plaintiffs and forcibly raped plaintiff Donna O. Plaintiffs brought a negligence suit against Bluebeard's Castle, the Association, the corporate officers and the Buckalews on the ground that these parties knew or should have known of similar prior criminal acts on the property, but failed to implement the necessary security measures to prevent such occurrences. This Court has diversity jurisdiction under section 22(a) of the Revised Organic Act of 1954<sup>1</sup> and 28 U.S.C. § 1332.

## II. DISCUSSION

### A. Summary Judgment Standard

Summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file,

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<sup>1</sup> 48 U.S.C. § 1612(a). The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp.2001), *reprinted in* V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp.2001) (preceding V.I. CODE ANN. tit. 1).

together with the affidavits, if any, show that there is no genuine issue respecting any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); see also *Sharpe v. West Indian Co.*, 118 F. Supp. 2d 646, 648 (D.V.I. 2000). The nonmoving party may not rest on mere allegations or denials, but must establish by specific facts that there is a genuine issue for trial from which a reasonable juror could find for the nonmovant. See *Saldana v. Kmart Corp.*, 42 V.I. 358, 360-61, 84 F. Supp. 2d 629, 631-32 (D.V.I. 1999), *aff'd in part and rev'd in part*, 260 F.3d 228 (3d Cir. 2001). Only evidence admissible at trial shall be considered and the Court must draw all reasonable inferences therefrom in favor of the nonmovant. See *id.*

**B. Plaintiffs and the Association Are Not Diverse Parties**

As this Court has previously noted "an association is not a separate legal entity for purposes of citizenship but rather is a citizen of every state or territory in which one of its members is a citizen. See *Guerrero v. Bluebeard's Castle Hotel, Inc.*, 37 V.I. 344, 982 F. Supp. 343, 347 (D.V.I. 1997). In their complaint, the plaintiffs stated that they were citizens and residents of Florida. (Compl. ¶ 1.) The Association has now come forward and established that some of its members are also residents of Florida. (Def.'s Mem. of Law in Supp. of Mot. for

Summ. J., Ex. 5-9.) Accordingly, as no diversity exists between the plaintiffs and the Association, the Association must be dismissed from this action.

As this Court must dismiss the Association from this action, Bluebeard's Castle contends that the Court must also dismiss it from this action as the Association is an indispensable party and to proceed without the Association would be unjust. This argument is unconvincing. First, although Bluebeard's Castle attempts to portray itself as an inconsequential party, the complaint specifically alleges that Bluebeard's Castle owned the premises upon which the Association was located and that it allegedly knew or should have known of the prior criminal acts upon the property. Thus, it is entirely reasonable to conclude that, absent the Association, the plaintiffs could receive complete relief. See FED. R. CIV. P. 19(a). Second, this Court faced a similar argument by Bluebeard's Castle in *Guerrero*, a case involving almost identical facts and parties. See *Guerrero*, 982 F. Supp. at 347-48. Although this Court did not specifically address Bluebeard's Castle's Rule 19 argument in *Guerrero*, I noted that "joint tortfeasors are not considered indispensable parties who must be joined in a lawsuit." See *id.* at 348 n.4. Therefore, as it can be reasonably inferred that I did not find the Association to be an indispensable party in *Guerrero* and

Bluebeard's Castle has not convinced me to hold otherwise, I will deny Bluebeard's Castle's motion for summary judgment.

Finally, in the event that I found the Association not to be an indispensable party, the Association requests that the Court utilize its authority under Rule 21 to condition a dismissal to require the plaintiffs "to pay the Association's costs for defending this suit." (Defs.' Reply in Supp. of Mot. for Summ. J. at 5-6.) I decline to do so as the Association is as much at fault as the plaintiffs for having a non-diverse party before this Court. The Association was a party to and had notice of my 1997 decision in *Guerrero* dismissing it from that case on the ground of lack of diversity. The Association clearly was on notice of the possibility that the parties to this action, which commenced in 1995, were also not diverse. Having sat on its rights for five years, the Association cannot now claim that it has been harmed by this jurisdictional defect. Accordingly, I will deny its request for costs.

### **III. CONCLUSION**

No diversity exists between the plaintiffs and the Association and, therefore, the Association must be dismissed from this action. As I find, however, that the Association is not an indispensable party, I will deny Bluebeard's Castle's

*Donna O. v. Bluebeard's*  
Civ. No. 1995-027  
Memorandum  
Page 7

motion for summary judgment. Finally, the Association sat on its rights for five years before bringing its present motion and is, therefore, not entitled to costs.

**ENTERED this 25th day of March, 2002.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

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Donna O. v. Bluebeard's  
1995-027  
Order  
page 7

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*For defendants Graves, Sullivan and Cavanaugh,*

**Ivan A. Guzman, Esq.**

St. Croix, U.S.V.I.

*For third-party defendants Buckalews.*

**ORDER**

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

**ORDERED** that defendant Association's motion for summary judgment (Docket No. 90) is **GRANTED**; it is further

**ORDERED** that defendant Bluebeard's Castle's motion for summary judgment (Docket No. 90) is **DENIED**; and it is further

**ORDERED** that defendant Association's requests for costs is **DENIED**.

**ENTERED this 25th day of March, 2002.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

*Donna O. v. Bluebeard's*  
1995-027  
Order  
page 8

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
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